

**ANALYSIS OF AMENDED BILL**

Author: Runner Analyst: Deborah Barrett Bill Number: SB 234  
 Related Bills: See Legislative History Telephone: 845-4301 Amended Date: 04-20-05  
 Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Court Authorization Required Prior to Release of Personal Or Financial Information To General Public

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

☒ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.

☒ FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED  
 \_\_\_\_\_ STILL APPLIES.

OTHER – See comments below.

**SUMMARY**

This bill would require Franchise Tax Board (FTB) or the Board of Equalization (BOE) to obtain authorization from a court of competent jurisdiction prior to releasing a taxpayer's personal or financial information to the general public.

**SUMMARY OF AMENDMENTS**

The April 20, 2005, amendments deleted all of the prior language in the bill and added language that would require FTB or BOE to obtain authorization from a court of competent jurisdiction prior to releasing a taxpayer's personal or financial information to the general public. The court's authorization would be based on a finding that a compelling interest would be served by the disclosure.

The amendments also would permit BOE to disclose personal or financial information of a taxpayer to the general public if the information is directly related to matters at issue before that board.

This analysis will only discuss the provisions of the bill impacting FTB.

**PURPOSE OF THE BILL**

According to the author's staff, the purpose of the bill is to protect taxpayer privacy by limiting the amount of information that would be disclosed through a Public Records Act Request.

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|-----------------------------------|---------------------|---------|
| Board Position:                   | Department Director | Date    |
| _____ S _____ NA _____ NP         | Gerald H. Goldberg  | 4/27/05 |
| _____ SA _____ O _____ NAR        |                     |         |
| _____ N _____ OUA _____ X PENDING |                     |         |

## **EFFECTIVE/OPERATIVE DATE**

This bill would be effective on January 1, 2006, and operative as of that same date.

## **POSITION**

Pending.

## **ANALYSIS**

### **FEDERAL/STATE LAW**

Existing federal and state laws prohibit the disclosure of any taxpayer information, except as specifically authorized by statute. Current law and department policy treats all information received, maintained, and generated as confidential unless disclosure is authorized by statute.

Under current state law, taxpayers may appeal the department's denial of a refund claim or denial of a protest to the BOE. These appeals necessarily involve tax return information that is prohibited from disclosure under general rules. Current law provides a specific exception allowing disclosure of taxpayer information in a judicial or administrative proceeding. Documents submitted as part of an appeal are public records, and, under open meetings rules, oral hearings on taxpayer appeals must be open to the public.

Current law requires that public records be open for inspection by members of the general public. Under the Public Records Act, members of the general public may request access to public records, and the agency maintaining those records must provide copies of the records, after deleting portions of the records that are exempt from disclosure by law.

Current law authorizes the department to file a Notice of State Tax Lien at the county recorder's office to establish the priority of a lien on all property and rights to property belonging to a taxpayer in this state. State tax liens are public records and contain both personal and financial information. The file date of the Notice of State Tax Lien establishes lien priority when compared against other liens and encumbrances.

### **IMPLEMENTATION CONSIDERATIONS**

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

- This bill uses phrases and terms that need clear definitions to avoid disputes between taxpayers and the department. It is unclear whether the author intends to create new terms and standards and thereby supersede existing terms and standards pertaining to relevance of evidence, confidentiality, and disclosure. For example it is unclear how the terms introduced by this bill would operate with existing law. Such as: "release" versus "disclose," and "personal information" and "financial information" versus "tax return" or "return information."
- Existing law under the Revenue and Taxation Code already contains a general rule prohibiting any "disclosure" unless an express exception provides otherwise. If it is the author's intent to prevent disclosures currently authorized under existing law, unless approved by a court, it is unclear which disclosures under current law, such as disclosures authorized in judicial proceedings, or disclosure authorized to legislative committees, are considered "releases to the general public" for purposes of this bill.

- In addition, it is suggested that the author clarify the term “general public” as this could be interpreted to prevent the department from contacting third parties in the collection, audit, and criminal investigation programs without first obtaining court authorization. If the provisions on this bill required court authorization prior to contacting third parties, this bill would seriously impair collection activities, such as levies, filing state tax liens, skip tracing, and audit activities such as verifying information provided by the taxpayer or obtaining information a taxpayer refuses to provide, thus increasing costs to the department. Disclosure authorized in judicial proceedings and administrative proceedings before the BOE, which are public by law, are not releases to the general public, although the general public may have access to the information. Clarification is needed to determine the extent this bill would impact current practice.

## **LEGISLATIVE HISTORY**

SB 280 (Campbell, 2005/2006) contains similar language regarding the release of taxpayer information to the general public requiring court authorization based on compelling need. The bill is currently in the Senate Revenue and Tax Committee.

AB 2421 (Campbell, 2004) contained language regarding the disclosure of personal and financial information related to investigations for determining residency for part-time residents. This bill was referred to the Assembly Revenue and Taxation Committee’s suspense file, with no further action taken.

## **FISCAL IMPACT**

The department's costs to administer this bill cannot be determined until implementation concerns have been resolved. Audit activities that are dependent upon factual development, such as residency and unitary business audits and collection activities, such as liens and levies, would likely be stopped while staff pursued court authorizations. The department would be required to utilize resources of the State Attorney General, which would increase operational costs to the department. Department costs could increase for audit, legal, and collection activities as a result of this bill.

## **ECONOMIC IMPACT**

### **Tax Revenue Estimate:**

Based on the extent to which provisions of this bill impact the collection processes of the department, this bill would have a significant, negative impact on state income tax revenues easily exceeding \$500 million annually beginning January 1, 2006.

The department sets up over \$1.3 billion annually in assessments to individuals and corporations as a result of audits. If the current procedures for collection of these assessments are delayed for court authorization as required under the provisions of this bill, the resulting delay would impair the department’s ability to effectively collect on these assessments. Based on the percentage of assessments and the dollar amount of those assessments that could be impacted by this bill, it is

projected that this bill would impact collection of audit assessments in the range of \$500 million to \$600 million annually.

In addition, the department sends out over 61,000 individual levies monthly to banks, credit unions, savings and loans, and employers to attempt to collect over \$400 million in cumulative taxes owed. The department also collects revenue through the use of state tax liens that could also be impaired by this bill. If the department is required to obtain a court order for each levy or notice of lien recorded, a significant portion of these collections could be at risk.

## **ARGUMENTS/POLICY CONCERNS**

The department provides press releases to publicize the arrest, arraignment, sentencing, and pleadings of criminal investigation cases for tax fraud or tax evasion and employee cases of embezzlement or theft. The information provided in the release is public information and is used to provide a public deterrent for these behaviors. This bill could prevent the release of already public information, resulting in lost opportunity to educate and inform the general public.

The provisions of this bill will prevent the publishing of BOE decisions that contain relevant facts and circumstances as well as the proper application of tax law to those circumstances. This would prevent taxpayers from being able to properly apply appropriate justification in appeals as current case law has determined that annotations by BOE are insufficient to apprise taxpayers of the proper application of laws. In addition, requiring a "compelling interest" to be found by the court prior to releasing information to the general public is a higher standard than what is normally imposed by the courts for obtaining evidence.

## **LEGISLATIVE STAFF CONTACT**

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